

# **Commission on Health and Safety and Workers' Compensation**

## **MINUTES OF MEETING**

**Thursday, April 19, 2001**

**San Francisco, California**

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### In Attendance

Chair John C. Wilson

Commissioners Leonard C. McLeod, Tom Rankin, Kristen Schwenkmeyer, Robert B. Steinberg

Executive Officer Christine Baker

### Not Attending

Commissioners Jill A. Dulich, Darrel "Shorty" Thacker

### **Call to Order / Adoption of Minutes**

Chair John Wilson called the meeting to order at 10:00 am and asked for a motion on the January 24, 2001 CHSWC meeting minutes. Commissioner Rankin moved for approval of the minutes, Commissioner Schwenkmeyer seconded and the motion passed unanimously.

Chairman Wilson then asked for a motion on the March 15, 2001 minutes of the Special CHSWC meeting by Conference Call. Commissioner Schwenkmeyer moved for approval of the minutes, Commissioner McLeod seconded and the motion passed unanimously.

### **Commendation for Commissioner Gerald P. O'Hara**

Chair John Wilson announced that former Commissioner Gerald P. O'Hara, who had resigned from the Commission in March 2001, was subsequently appointed by the Governor to the California Occupational Safety and Health Appeals Board. Chairman Wilson read a proposed resolution commending Mr. O'Hara for his many years of dedicated service to the people of the State of California.

Commissioner Rankin moved for approval of the commendation, Commissioner Schwenkmeyer seconded and the motion passed unanimously. (The text of the commendation is included as an attachment to these minutes.)

### **Update on Rand Studies for the Commission**

#### **When and Why Young Workers File Workers' Compensation Claims: Understanding the Costs of Filing**

Robert T. Reville, PhD, Research Director, Rand Institute for Civil Justice

Mr. Reville stated that he had provided to the CHSWC members a report with an update on the RAND studies for the Commission dealing with permanent disability and return to work issues. Mr. Reville then presented the preliminary findings from a study performed by Rand on the filing of workers' compensation claims by young workers. Mr. Reville stressed that this is not part of the CHSWC Permanent Disability Study, but did grow out of the CHSWC-Rand Return to Work report. He wanted to present these findings to encourage comments and feedback.

Mr. Reville reported that RAND was focusing on examining how the costs of making workers' compensation claims can suppress claim filing. Some of the key findings from the study include that a worker who has health insurance or belongs to a union has a greater probability of making a workers' compensation claim than a person without health insurance or who does not belong to a union. A possible explanation for this is that workers who have health insurance have lower information costs and out of pocket treatment expenses than those without health insurance and are thus more likely to file a claim. Also, workers who have occupational illnesses are less likely to file a claim since it is harder to prove that the illness is work related (i.e., illnesses have a higher information cost associated with them).

In response to questions from Commission members, Mr. Reville said that while the findings were preliminary, this study indicated that workers' compensation claims were probably not a good indicator for the understanding of workplace injuries, due to underreporting.

### **Presentation of the "Workers' Compensation Benefit Simulation Model"**

Frank Neuhauser, Survey Research Center, UC Berkeley

A 'Workers' Compensation Benefit Simulation Model', for the use of policy makers in the analysis of workers' compensation wage replacement rates and benefit distribution, has been jointly developed by the Commission, the Department of Industrial Relations and the University of California at Berkeley.

The model, developed to run on a personal computer, will provide estimates of the impact of changing the numerous parameters that determine individual benefits. The model will enable policymakers and the legislature to test the impact of any benefit change or combination of benefit changes on wage replacement rates.

In response to questions from Commission members, Mr. Neuhauser reported that the model is being reviewed by RAND for the Commission. He also stated that there is a list of instructions and back up documents that go along with the model which contain the assumptions of the model. Ms. Baker added that in their technical review of the model RAND has suggested that more recent wage and disability information be incorporated into the model.

### *CHSWC Vote*

Commissioner Steinberg moved to release the benefit model for distribution once the technical review by RAND and legal review by the Commission staff is finalized. Commissioner Rankin

seconded and the motion passed unanimously.

## **Update on Anti-Fraud Activities**

Thomas J. McBirnie, Legal Consultant, CHSWC

In November 2000, the Commission voted to host a roundtable on workers' compensation fraud. Prior to holding the roundtable the Commission issued a call for information. The workers' compensation community and interested members of the public were asked to respond with their suggestions to six issues: (1) Whether Workers' Compensation fraud is a major problem; (2) The scope of the anti-fraud program; (3) Focus and priority of anti - fraud campaign; (4) Sources and level of funding for anti-fraud activity; (5) Inter-agency coordination; and (6) Ideas, innovations, new approaches.

The CHSWC roundtable on anti-fraud activities was held in San Francisco on April 10, 2001 with over 30 members of the workers' compensation community. A draft report on the Workers' Compensation Anti-Fraud Program was prepared. Input was received that anti-fraud programs should target medical provider fraud and employer premium fraud due to their economic impact. Preliminary findings and recommendations from the draft report include that the criminal penalty for being knowingly illegally uninsured should be increased; that there should be more cooperation between private and public agencies to share information that could aid in the prosecution of suspected fraud; and that there should be employee representation on the Fraud Assessment Commission.

### *CHSWC Vote*

Commissioner Rankin moved to circulate the Draft Report on the Workers' Compensation Anti-Fraud Program to the community. Commissioner Wilson seconded and the motion passed unanimously.

Commissioner Wilson asked if there is a consensus among the Commission members to have an additional roundtable on anti-fraud. All Commission members responded in the affirmative.

## **Update on the Judicial Study**

Nicholas Pace, RAND

There has been an ongoing debate in workers' compensation over the operation of the judicial process. The Department of Industrial Relations (DIR), the Division of Workers' Compensation (DWC) and the Commission believe that an independent study and evaluation of the DWC judicial process would be very helpful in addressing problems such as delay in resolving cases.

At the urging of the Division of Workers' Compensation and others in the workers' compensation community, the Commission voted to engage in a major study and evaluation of the DWC judicial function. The RAND Institute for Civil Justice was chosen to perform this research by a competitive proposal and bidding process and began the project in October 2000.

Some of the specific objectives of the study are to identify the sources of delay and to what extent district offices and individual judges differ in their policies and procedures.

Mr. Pace reported on the progress to date in the study and the next steps involved. Since the beginning of the project, the study team has familiarized itself with the WCAB on-line system and five courts across the state. Mr. Pace stated that the RAND project team had recently received a complete set of data from DWC and are continuing their analysis of the data and relevant review of research literature. The team has also established a resource group comprised of approximately 20 workers' compensation experts including applicant and defense attorneys, judges and lien claimants. Mr. Pace stated that beginning in May 2001 the project team will begin the second phase of the project. This phase includes a review of actual case files and six intensive site studies of representative WCAB selected for comprehensive week long visits. The sites chosen consist of three large and three medium sized offices. Each site study will involve an evaluation of how efficiently and fairly the court functions and a survey of judges, administrators, local attorneys and office personnel at each site.

Mr. Pace noted that in early August the study team expects to hold public roundtables for the community to comment on the process and to release a draft report at the end of August.

## **Other Business**

### Permanent Disability Study of Self-Insured

Ms. Baker reported that RAND has finalized their self-insured report from Commission's Study of Permanent Disability. The report is entitled "Permanent Disability at Private, Self-Insured Firms." Ms. Baker stated that the report would be available to the public at the Commission's web site or by contacting the Commission or RAND. Ms. Baker requested permission to distribute the report.

### *CHSWC Vote*

Commissioner Rankin moved to allow the distribution of RAND's "Permanent Disability at Private, Self-Insured Firms" final report. Commissioner Schwenkmeyer seconded and the motion passed unanimously.

### WCRI Worker Outcome Survey Project

Ms. Baker reported that the Workers Compensation Research Institute invited the Commission to be a co-sponsor of the WCRI Workers Outcome Survey Project. The survey will be conducted annually to determine whether outcomes for injured workers are improving. The goals of the project are to obtain information about return to work, health and functioning and worker satisfaction with health-care. Concerns were that CHSWC would not have sufficient input or control over the project to ensure that it would meet Commission standards. After some discussion, the issue was not brought to a vote.

## **Adjournment**

Commissioner Steinberg moved to adjourn the meeting, Commissioner Rankin seconded the motion

and the meeting was adjourned at 12:56 pm.

Approved:

Respectfully submitted,

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John C. Wilson, Chair

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Date

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Christine Baker, Executive Officer

Attachment:

Text of the Commendation to Commissioner Gerald P. O'Hara

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**COMMISSION ON HEALTH AND SAFETY AND WORKERS' COMPENSATION  
CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS**



**COMMENDATION for GERALD P. O'HARA**

**WHEREAS**, Gerald P. O'Hara was appointed to the Commission on Health and Safety and Workers' Compensation by the Speaker of the Assembly to represent labor and has served since its inception in 1994; and

**WHEREAS**, Gerald P. O'Hara was the Director of the California Teamsters Public Affairs Council until March 2001; and spoke on behalf of union members at the California Legislature and before California state administrative agencies; and

**WHEREAS**, Gerald P. O'Hara has served on the Governor's Blue Ribbon Commission on Workers' Compensation in 1973, on Governor Deukmejian's Labor Management Workers' Compensation Insurance Reform Task Force in 1989 and Governor Wilson's Workers' Compensation Reform Task Force in 1993; and

**WHEREAS**, Gerald P. O'Hara served on the State of California Occupational Safety and Health Standards Board for 16 years, and in March 2001, was appointed by the Governor to the California Occupational Safety and Health Appeals Board; and

**WHEREAS** Commissioner Gerald P. O'Hara has announced his resignation from the Commission on Health and Safety and Workers' Compensation effective March 2001; and

**WHEREAS**, Gerald P. O'Hara, a graduate of the University of San Francisco, has dedicated his knowledge and expertise to the betterment of health, safety and workers' compensation for many

years;

**NOW, THEREFORE, WE, THE MEMBERS OF THE COMMISSION ON HEALTH AND SAFETY AND WORKERS' COMPENSATION**, do hereby commend Gerald P. O'Hara for his dedication and service to the people of the State of California.

John C. Wilson, Chairman  
Jill A. Dulich  
Leonard C. McLeod  
Tom Rankin  
Kristen Schwenkmeyer  
Robert B. Steinberg  
Darrel "Shorty" Thacker

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